

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR-6038 of 2019 (O&M)

Date of decision: 22.11.2021

Anoop Jain and another

...Petitioners

Versus

Satinderjit Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Ms. Sarika Gupta, Advocate for the petitioners.

Mr. Parvinder Singh, Advocate for the respondent.

H.S. MADAAN, J.

Briefly stated facts of the case are that plaintiffs Anoop Jain and his wife Anshu Jain had brought a civil suit against defendants Satinderjit Singh and others seeking a declaration that they are joint owners in possession in the joint land to the extent of 58/446 share i.e. 22 marlas out of 8K-11M situated at Village Sohana and proceedings of partition carried out between the defendants are null and void, besides being against provision of Punjab Land Revenue Act; further seeking a declaration that preliminary decree obtained by defendant No.1 against present plaintiffs in civil suit No.277 dated 02.12.2013 decided on 28.07.2015 is null and void, besides seeking a decree for permanent injunction restraining the defendants not to get any possession etc. and not to get the impugned decree dated 28.07.2015 implemented and executed etc.

On notice, the defendants put in appearance. Defendant No.1 appeared and filed written statement, contesting the suit. During the course of proceedings, the plaintiffs moved an application for amendment of the plaint to the effect that the final decree passed on 04.01.2019 on the basis of impugned preliminary decree dated 28.07.2015 is also illegal and void, ineffective qua rights of the plaintiffs with consequent additions in the plaint; that application was resisted by defendant No.1.

After hearing arguments, the application was dismissed, which left the plaintiffs aggrieved and they have approached this Court by way of filing the revision petition, notice of which was given to respondent No.1, who has put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

The trial Court had dismissed the application mainly for the reason that the plaintiffs have already filed an appeal against judgment and decree dated 04.01.2019 and no valid or legal reason has been mentioned in the application for challenging that judgment and decree in the present suit. The only reason given is that it has been passed during pendency of the suit and the plaintiffs wish to challenge the same by way of getting the plaint amended.

I do not see any reason to disagree with the trial Court as regards dismissal of application for amendment. Order 6 Rule 17 CPC deals with amendment of pleadings. It provides that the Court may allow either party to amend his pleadings in any manner and on such terms as

may be just and such amendment may be made as may be necessary for the purpose of determining the real questions in controversy between the parties. As per proviso, no application for amendment shall be allowed after the trial has commenced unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

Now, it is to be seen as to whether the proposed amendment is necessary for determining the real questions in controversy between the parties. The trial Court in its wisdom did not find it to be so, though, it is not specifically mentioned in the order. Even otherwise, the plaintiffs having filed the appeal against the final judgment and decree, they cannot get its legality and validity examined again in the civil suit by challenging those there. Same remedy cannot be asked for in two Courts simultaneously. I do not find any illegality or infirmity with the impugned order which might have called for interference by this Court by exercising revisional jurisdiction. The revision petition is found to be without merit and is dismissed accordingly.

22.11.2021

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No